आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI PARESH M. JOSHI, JUDICIAL MEMBER
AND
SHRI ARVIND SONI, ACCOUNTANT MEMBER
ITA No.283/Ind/2024 & 302/Ind/2024
Assessment Year-2014-15

Ashok Kumar Khandelwal, Indore 777, Sudama Nagar **(PAN:AHQPK3567M)**	**बनाम/** Vs.	DCIT 1(1), Indore
(Revenue/Appellant)		(Assessee/Respondent)
Assessee by		Sh. Pavan Ved, Adv
Revenue by		Sh. Binay Kumar Rai, SR DR
Date of Hearing		06.10.2026
Date of Pronouncement		22 .10.2026

ORDER

Per Paresh M. Joshi, JM:

ITA No:-283/Ind/2024:

This is an Appeal filed by the Revenue under section 253 of the Income tax Act 1961,[herein after referred to as the **Act** for the sake of brevity] before this tribunal. The Revenue is aggrieved by the order bearing No:-ITBA/NFAC /S/250/2023-24/1061402369 (1) dated **23.02.2024** passed by the Ld. CIT(A) u/s 250 of the Act which is hereinafter referred as the **"Impugned Order"**. The Relevant Assessment

Year is 2014-2015 and the corresponding Previous Period is from 01/04/2013 to 31/03/2014.

2. FACTUAL MATRIX

2.1 That as and by way of an Assessment Order **passed u/s 143(3) of the Income Tax Act, 1961** the total Income of the Assessee was computed and Assessed at **Rs 1,36,60,830/-[RIO].** The ROI was at Rs. 38,71,370/- filed on 02.03.2015. The case of the Assessee was selected for limited scrutiny through CASS & Notice u/s 143(2) dated 18.09.2015 was issued by ACIT 5(1) Indore & was duly served upon the Assessee. The case was transferred & due to change of Incumbent a fresh notice u/s 143(2) dated 06.07.2016 was again issued for giving an opportunity for 15.17.2016. Query letter u/s 142(1) were issued during the course of the Assessment Proceedings & further queries were raised as per order sheet entries.

2.2 The assessee was deriving Income from salary, business or profession, capital gains & other sources.

2.3 The issue with respect to the limited scrutiny were being (i) sale consideration of property is less than value as per stamp authority (as per ROI) was verified.

2.4 The Ld AO in the Assessment Order before computing the total Income discussed following points, which were as under:-

"Addition u/s 50C and disallowance of claim u/s 54F"

(i) That during the course of the Assessment Proceedings vide questionnaire dated 27.07.2016, the Assessee was called upon to File the reasons and to give Justification as to why he has adopted the sale considered of the property less than the value as per stamp authority. The Assessee was also called upon to furnish copy of sale deed and related purchase deed.

(ii) That the Assessee in response to the aforesaid Notice dt 27.06.2016 furnished the required details along with the Justification for adopting sale consideration of the property as less than value as per stamp Authority.

(iii) It was submitted by the Assessee that he had purchased the land at 136/1[Paikee],[0.070 hect] Kabitkhedi

Sukhaliya on 26.06.2009 & later on this land was introduced as and by way of capital contribution in his buildership firm during AY 2014-15 at the value of Rs 60,28,000/- though the guideline value of the capital Asset was at Rs.1,40,000,00/- the Assessee took into consideration the sale consideration at Rs 60,28,000/- for the capital gain purposes in view of Section 45(3) which says that the amount recorded in the books of Account of the firm shall be deemed to be the full value of consideration accured as a result of the transfer of the capital asset.

(iv) That the aforesaid land was purchased by the Assessee during the AY 2009-10. The total cost of Acquisition was recorded at Rs 21,35,300/- [Including cost of land purchased for Rs 11,90,000/- & cost of improvement of Rs 9,45,300/-].

(v) On the above transaction the Assessee claimed to have earned capital gain of Rs 28,55,458/- against which Exemption u/s 54F has been claimed at Rs 18,17,466/- for purchase of flat at Shanti Regency for Rs 23,50,000/-

& on the balance capital gain of Rs 10,37,992/- the Assessee offered for LTCG u/s 112 of the Tax.

(vi) That the Ld AO vide Note Sheet entry dated 06.08.2016 the Assessee was asked to explain as to why section 50C valuation should not be adopted for long term capital gain on transfer of capital asset. The assessee was also required by the Ld AO to furnish documents/evidence to satisfy the requirement of Section 54F along with the capital account and the balance sheet of the Assessee from the AY 2013-14. That the Assessee duly furnished the relevant information on 11.08.2016 along with the required document. On the examination of submission of the Assessee it was found & noticed that **"Since the Assessee is the owner of three residential properties as on 01.04.2013 therefore he is not entitled to claim exemption u/s 54F(1) which reads as provide that nothing contained in this subsection shall apply where-**

(a)The Assessee-

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(i) Owns more than one residential house, other than the new asset on the date of transfer of the original asset OR..."

2.5 That vide note sheet dated 11.08.2016 the assessee was also required to show cause as to why sale consideration accrued as a result of transfer of capital asset (Land) should not be assessed for the purpose of section 48 as per guidelines for the purpose of payment of stamp duty to stamp valuation authorities u/s 50C. **The assessee furnished reply on 23.08.2016 which is reproduced below:-**

"In connection with the assessment of the above assessee & in continuance of previous hearing we are submitting following submission as follows

Though after giving various justification and clarification regarding sale consideration would be amount recorded in the books of accounts of the firm and not the market value as calculated u/s 50(C), **Now we are voluntarily accepting the fact that sale consideration recorded in our books Rs. 60,28,000/-will not be taken for the purpose of capital gain**

u/s 48 and the market value Rs. 1,40,00,000/- shall be the sale consideration for the capital gain working.

In addition to the above, Assessee has claimed exemption u/s 54F for investment in purchase of residential flat. But during the course of assessment proceedings we come to know that assessee is not eligible for exemption u/s **54F due to owner of more than one house on the date of transfer.**

And, after discussion held during the assessment proceeding with the honorable Assessing Officer, **we had voluntarily offered difference of amount recorded in the books of partnership firm and market value of the capital asset on 01/04/2013 i.e. Rs. 79,72,000/- and amount of exemption wrongly claimed u/s 54 F i.e. Rs. 18,17,466/- might be treated as our additional capital gain tax liability u/s 112.**

The amount of transfer u/s 45(3) had been taken amount recorded in the books of accounts rather taking of market value u/s 50(C) in the said transaction for the purpose of capital gain working u/s 48, this mistake happened due to reference of various text books in which it is mentioned that sec 50(C) shall

not applicable in case of transfer u/s 45(3), Your honour we just want to say here that the intention of the assessee was bonafide.

The revised capital gain working and additional tax working shall be are as under:

Sale consideration	1,40,000,00
Less: Indexed cost of acquisition	
21,35,300*939/632	31,72,542
Long term capital gain	1,08,27,458
Tax u/s 112	21,65,492
Less: Tax paid u/s 140A	2,07,598
Additional Tax payable	19,57,894

Thus, we here suo motu offer the additional long term capital gain and agreed to pay additional tax to buy peace of mind and to avoid litigation. And here request your honour to not initiate penalty proceedings u/s 271(1)(C).”

2.6 That on Para 4.7 the Ld AO has recorded as under which is reproduced by us as below:-

On perusal of the submission of the assessee it is noted that:

(i) the assessee has suo moto admitted its mistake and offered long term capital gain for the purpose of section 48 as per guidelines for the purpose of payment of stamp duty to stamp valuation authorities u/s 50C.

(ii) The assessee has withdrawn exemption claimed u/s 54F of the Income Tax Act.

2.7 In final analysis the Ld AO assessed long term capital gains as per the provisions of Section 50C & the exemption claimed u/s 54F was disallowed. That the aforesaid Assessment Order is dated 24.08.2016 which is hereinafter referred to as the **"Impugned Assessment Order"** for sake of convenience & ease.

2.8 That the Assessee being aggrieved by the aforesaid **"Impugned Assessment Order"** prefers **the first appeal u/s 246A of the Act** before the Ld. CIT (A) who by the **"Impugned Order"** has **dismissed** the first appeal of the

Assessee on the grounds & the reasons stated therein. The core grounds & the reasons for the dismissal the first appeal was as under:-

5. Decision:

5.1 During the course of appeal proceedings, hearing notices were sent and the appellant e-filed documents / submissions. Further, the appellant was given with personal hearing by way of video conferencing by CIT(A), NFAC on 20.02.2024 and accordingly, opportunity was given to clarify and explain the case including the reason for delay in filing of appeal. Accordingly, the issues raised in the grounds are adjudicated as under:

5.2 It is noticed from assessment order that the case was selected under 'CASS' by way of issuance notice u/s 143(2) of the Act vide dated 18.09.2015. During the course of assessment

proceedings, the Assessing Officer has noticed that the appellant has introduced capital contribution in his partnership firm during the relevant financial year by way of transfer of a piece of land held by him for a value of Rs.60,28,000/-, Whereas, the guideline value of the said land was Rs. 1,40,00,000/-. Accordingly, it was found that the appellant has quantified the capital gain by taking the transfer value of the land as Rs.60,28,000/- and quantified capital gain amounting to Rs.28,55,458/- and also claimed exemption u/s 54F of the Act amounting to Rs. 18,17,466/- on account of purchase of flat for a consideration of Rs.23,50,000/-and offered balance gain of Rs. 10,37,992/- as 'Long Term Capital Gain'.

5.3 Since, the transfer value of the land was lesser than the guideline value as per Section 50C of the Act and also the appellant was

found to be the owner of three (3) residential properties as on 01.04.2013, the Assessing Officer show-caused why the capital gain should not be computed by invoking Section 50C of the Act and also the exemption claimed u/s 54F of the Act should not be disallowed in view of the Proviso of Section 54(1) of the Act.

5.4 In response to the said show-cause notice, the appellant has filed a detailed reply on 23.08.2016 before the Assessing Officer, which is reproduced as under:

"In connection with the assessment of the above assessee & in continuance of previous hearing we are submitting following submission as follows:

Though, after giving various justification and clarification regarding sale consideration

would be amount recorded in the books of accounts of the Firm and not the market value as calculated u/s 50C of the Act. Now, we are voluntarily accepting the fact that sale consideration recorded in our books Rs. 60,28,000/- will not be taken or the purpose of capital gain u/s 48 of the Act and the market value Rs. 1,40,00,000/- shall be the sale consideration for the capital gain working.

In addition to the above, assessee has claimed exemption u/s 54F for investment in purchase flat. But during the course of assessment proceedings, we come to know that assessee is not eligible for exemption u/s 54F due to owner of more than one house on the date of transfer.

And, after discussion held during the assessment proceedings with the honorable Assessing Officer, we had voluntarily offered

difference of amount recorded in the books of partnership firm and market value of the capital asset on 01.04.2013 i.e. Rs. 79,72,000/- and amount of exemption wrongly claimed u/s 54F of the Act i.e. Rs. 18,17,466/- might be treated as our additional capital gain tax liability u/s 112.

The amount of transfer u/s 45(3) had been taken amount recorded in the books of accounts rather taking of market value u/s 50C of the Act in the said transaction for the purpose of capital gain working u/s 48, this mistake happened due to reference of various text books in which it is mentioned that Sec 50C shall not applicable in case of transfer u/s 45(3). Your honour we just want to say here that the intention of the assessee was bona-fide.

The revised capital gain working and additional tax working shall be as under.

Sale Consideration: Rs. 1,40,00,000/-

Less: Indexed cost of acquisition (Rs.21,35,300*939/632): Rs.31,72,542/-

Long term capital gain: Rs. 1,08,27,458/-

Tax u/s 112: Rs. 21,65,492/-

Less: Tax paid u/s 140A: Rs. 2,07,598/-

Additional tax payable: Rs. 19,57,894/-

Thus, we here suo-moto offer the additional long term capital gain and agreed to pay additional tax to buy peace of mind and to avoid litigation. And here request your honour to not penalty proceedings u/s 271(1)(c) of the Act."

5.5 In view of the above, by suo-moto admitting his mistake, the appellant had offered 'Long

Term Capital Gain' as per the guideline value and also withdrawn the exemption claimed u/s 54F of the Act. Accordingly, the Assessing Officer has completed the assessment as per the admission made by the appellant without conducting any further enquiry.

5.6 On the receipt of the assessment order, the appellant has not filed the appeal before the first appellate authority within the due date of filing the appeal. After the delay of 179 days, the appellant has filed an appeal before the first appellate authority with the grounds that the provision of Section 50C of the Act cannot be invoked on the capital contribution of land made in the partnership firm, which is otherwise taxable as per Section 45(3) of the Act and also submitted that the same will be tantamount to double taxation, since, the said

firm have to offer more gain on account of sale of said land.

5.7 During the course of appellate proceedings, the appellant has filed detailed written submission vide letter dated 23.11.2022 and submitted that the delay was on account of levy of penalty by the Assessing Officer on the disallowances made in the quantum assessment order due to the fact that the appellant initially did not file appeal in order to buy peace and requested the Assessing Office not to levy the penalty. On the receipt of the penalty order, the appellant has consulted with the lawyer and based on his opinion, it was noticed that the addition made in the assessment order was legally not correct. Hence, the present appeal was filed. Therefore, the appellant submitted that, there was a reasonable cause for delay in filing the appeal.

In support of the same, the appellant has relied on the decision of Hon. Supreme Court in the case of Collector of Land Acquisition (vs) Katiji vide 167 ITR 471.

5.8 The submission made by the appellant on the condonation of delay in filing the appeal has been considered. It is clear from the assessment order that the appellant was represented by Chartered Accountant namely Mr. Vinod Ranwal (CA) and he represented the case before the Assessing Officer and vide order sheet noting dated 11.08.2016, the appellant was show-caused through Authorized Representative that why the sale consideration accrued as a result of transfer of land should not be accessed as per Section 50C of the Act by considering guideline value of the land and claim of the exemption u/s 54F of the Act should not be denied as per Proviso to Section

54F(1) of the Act, since, the appellant was the owner of three (3) residential properties as on 01.04.2013, In response to the same, the appellant has voluntarily admitted vide submission dated 23.08.2016 by accepting the disallowances proposed by the Assessing Officer. As a result, the appellant took a conscious decision not to file appeal against the said assessment order.

5.9 In view of the above facts, I am of the considered view that the, the condonation of delay is not admissible, when the appellant takes conscious decision not to file as appeal against the assessment order. In this regard, reliances are placed on the decision of Hon. Mumbai ITAT, in the case of SS Builders (vs) ITO 2010/TIOL/714/ITAT/Mum.

5.10 It is further, notable that the Hon. Chennai ITAT in the case of M/s Senthil Murugan Jewellers (vs) DCIT in ITA no.768/Chny/2020 dated 14.12.2022 on the similar facts of the case, has held that the delay in filling of appeal cannot be condoned within the purview of reasonable cause on account of non-filing of appeal in time as per the advice of Chartered Accountant (C.A.). The relevant para of the decision of Hon. ITAT (para no. 5, 6 & 8) is reproduced as under for better clarity:

"5. We have heard both the sides, perused the condonation petition filed in the form of affidavit and case law relied upon by both the parties. Admittedly, the assessee has filed its appeal with a delay of 449 days in filing the appeal. The assessee has filed an affidavit, wherein it was stated that the CA of the

assessee company has not advised the assessee to file an appeal. The CA has also filed an affidavit stating that he has not advised the assessee to file an appeal against the order passed by the Ld. PCIT under section 263 of the Act. After examining the entire affidavit, we find that the assessee has not asked its CA whether to file an appeal or not. When the assessee asked the opinion of the CA, then the CA has to advise as to whether an appeal has to be filed or not. No material was brought on record that the assessee has sought for the advice of the CA or not. In the affidavit filed by the CA of the assessee company, it was stated that he has not advised the assessee to file an appeal. The affidavit filed by the CA of the assessee company is dated 29.10.2022 and, therefore, we are of the opinion that the affidavit filed by the CA of the assessee company is nothing but an afterthought and

the explanation given by the assessee on the basis of the CA's affidavit cannot be accepted as sufficient cause to condone the delay.

6. The case law relied on by the assessee in the case of Collector. Land Acquisition (vs) MST. Katiji & Ors. (supra) has no application to the facts of the present case.

8. By considering the submissions of the Ld. Counsel as well as reasons stated in the affidavit filed by the assessee for condonation of delay, we are of the considered opinion that the reasons given by the assessee in the affidavit does not come under reasonable cause for condonation of delay, as prescribed under the Act and thus, we reject the petition filed by the assessee for condonation of delay. The case was relied on by the Ld. Counsel for the assessee in the case of Collector. Land Acquisition (vs) MST. Katiji & Ors (supra) has no application to the facts of the present case.

Since, we have rejected the petition for condonation of delay of 449 days in filing the appeal before the Tribunal, the appeal filed by the assessee is not maintainable and accordingly, the appeal filed by the assessee is dismissed."

5.11 Further, the reliance is also placed on the following decisions, wherein, it was held that the condonation is not a matter of right and the appellant has to give reasons for delay on the last day of limitation period and thereafter for each day of delay:

i) Rankak & Others (vs) Rewa Coalfields Ltd. AIR 1962 SC 361.

ii) 149. JCIT (vs) Tractors & Farm Equipments Ltd. (ITAT, Chennai-TM) 104 ITD

iii) Madhu Dadha (vs) ACIT (Mad) 317 ITR 458.

In view of the above, the condonation of delay in filing the appeal is not admissible.

5.12 Further, it is an admitted fact that the appellant did not file the appeal on account of its admission before the Assessing Officer during the course of assessment proceedings, which has precluded the Assessing Officer to conduct further necessary inquiry on the said issues. Therefore, since the appellant did not file the appeal on the basis of consent, could not take up the same issue by way of filing the appeal before the first appellate authority. In this regard, reliances are also placed on the decision of Hon. Madras High Court in the case of Southern Foundation Pvt. Ltd. (vs) ACIT 324 ITR 76, wherein, it was held that the disallowances made by the Assessing Officer on the basis of consent given by the appellant could not be taken in appeal. It is also

observed that, as per the decision of Hon. Kerala High Court in the case of Mahesh B. Shah (vs) ACIT 103 TAXMAN 91, wherein it was held that when the appellant himself agreed to treat voluntarily contribution made by him to a building fund as a capital expenditure before the Assessing Officer and no evidence was furnished to show that he was coerced to agree, it was not permissible to allow him to go back on his own stand.

5.13 In the instant case, the appellant was represented by qualified Authorized Representative and it was admitted before the Assessing Officer voluntarily without any coercion. Hence, the change of appellant's stand is not admissible as per decision of Hon. Madras High Court and Hon. Kerala High Court (cited supra). In view of the above, the appeal

filed by the appellant is not maintainable and accordingly dismissed.

6. In the end result, the appeal of the appellant is hereby dismissed.

2.9 That the Assessee being aggrieved by the **"Impugned Order"** has preferred the Instant Second Appeal before this Tribunal & has raised the following grounds of appeal in the form No: -36 against the **"Impugned Order"** which are as under: -

1. The Ld. CIT(A) has erred in not condoning delay in filing appeal.

2. The Ld. CIT(A) was not justified in not deciding the issue of appeal that the land introduced in the partnership as capital by the assessee should be assessed u/s. 45(3) instead of u/s. 50C.

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 06/10/2026, when the Ld AR for and on the behalf of the Assessee appeared before us & Interalia contended that the **"Impugned Order"** is bad in law, illegal & not Proper. It therefore deserves to be set aside.

3.2 The Ld AR has placed on the record of this tribunal a Paper Book I, II & II in support of form No:-36.

3.3 The Ld AR at the outset and at the threshold brought our attention to Internal Page 4 of the "Impugned Assessment Order" were in the following is recorded by the Ld AO which is reproduced by us as below:-

> ***"Thus, we here suo motu offer the additional long term capital gain and agreed to pay additional tax to buy peace of mind and to avoid litigation. And here request your honour to not initiate penalty proceedings u/s 271(1)(C)".***

After reading the above Para Ld AR emphatically emphasized that such an admission was made by earlier Authorized Representative of the Assessee during the course of the Assessment proceedings & now the Assessee retracts from the same. Upon a query by bench whether **such an approach is not permissible in law at this stage of the Proceedings to which** Ld. AR replied & stated that **earlier Authorized Representative of the Assessee has made an incorrect admission.** Upon a further query by the bench that how he says such was an oral admission & as to whether anything is on record to which Ld. AR replied that **NO** firmly & once again emphasized emphatically that there is an oral admission only by the earlier Authorized Representative of the Assessee. At this stage upon requesting Ld. SDR to address us on this limited issue only, the Ld. DR Shri Rai invited our attention to Para 4.6 of the Impugned Assessment Order which is already reproduced by us at. Para 2.5 (supra). The Ld SDR Shri Rai then read out entire Para 4.5 of the **"Impugned Assessment Order"** very emphatically & concluded that **sudden volte facie is done by Ld AR at this stage of hearing before ITAT which approach & attitude is not permissible in law.**

The Ld SDR Shri Rai then pointed out & read entire Section 136 of the Act .

After reading the **Section 136** of the Act the Ld. SDR Shri Rai contented that use of the word **"Any"** in the Section 136 pertains to all proceedings under the Act including the Assessment Proceeding. The Ld. Assessing Officer exercises "Quasi-Judicial Power" & the Quasi-Judicial Proceedings must have some sanctity in law otherwise it would lead to chaos & the Assessee would get leeway to go back from their commitments made during the Assessment proceedings, as a result of which Tax Administration would suffer. Quasi-Judicial process is akin & deemed in law to be Judicial in Nature; hence it is Quasi-Judicial. Sanctity of process is of importance. The Ld. SDR strongly deprecated such wrong attitude of Ld. AR at this stage of proceeding when admittedly the Assessee has made admission (supra) & stand of Ld AR on earlier Authorized Representative of the Assessee is totally false, bogus & was made with a view to keep this tribunal in total dark. It was pleaded that the Assessee is not coming to this tribunal with clean hands & the instant appeal should be dismissed on this limited score as **truth has**

triumph today. In rejoinder the Ld AR did not reply anything. The hearing was over & closed.

Observations, Finding and Conclusions

4.1 We have to decide the legality, validity and the proprietary of the **"Impugned Order"** basis records of the case & the rival submissions canvassed before us.

4.2 We have carefully perused the records of the case and have heard the submissions.

4.3 We basis records of the case and after hearing and further upon examining the rival contentions of the Ld AR & Ld DR canvassed before us are of the considered opinion that in the Impugned Assessment order at Para 4.6 it is clearly recorded that vide reply dt 23.08.2016 it is clearly recorded by the Assessee as follows which in our view is admission of liability:-

Para 4.6 "Impugned Assessment Order" Internal Page 3

> ***Though, after giving various justification and clarification regarding sale consideration would be amount recorded in the books of***

accounts of the Firm and not the market value as calculated u/s 50C of the Act. We are voluntarily accepting the fact that sale consideration recorded in our books of Rs. 60,28,000/- will not be taken for the purpose of capital gains u/s 48 & the market value of Rs 1,40,00,000/- shall be sale consideration for the capital gain working."

"In addition to the above, Assessee has claimed exemption u/s 54F for investment in purchase of residential flat. But during the course of assessment proceedings we come to know that assessee is not eligible for exemption u/s 54F due to owner of more than one house on the date of transfer"

"And, after discussion held during the assessment proceeding with the honourable Assessing Officer, we had voluntarily offered difference of amount recorded in the books of partnership firm and market value of the capital asset on 01/04/2013

i.e. Rs. 79,72,000/- and amount of exemption wrongly claimed u/s 54 Fie. Rs. 18,17,466/- might be treated as our additional capital gain tax liability u/s 112."

"The amount of transfer u/s 45(3) had been taken amount recorded in the books of accounts rather taking of market value u/s 50(C) in the said transaction for the purpose of capital gain working u/s 48, this mistake happened due to reference of various text books in which it is mentioned that sec 50(C) shall not applicable in case of transfer u/s 45(3), Your honour we just want to say here that the intention of the assessee was bonafide"

The revised capital gain working and additional tax working shall be as under.

Sale Consideration: Rs. 1,40,00,000/-

Less: Indexed cost of acquisition (Rs.21,35,300*939/632): Rs.31,72,542/-

Long term capital gain: Rs. 1,08,27,458/-

Tax u/s 112: Rs. 21,65,492/-

Less: Tax paid u/s 140A: Rs. 2,07,598/-

Additional tax payable: Rs. 19,57,894/-

"Thus, we here suo motu offer the additional long term capital gain and agreed to pay additional tax to buy peace of mind and to avoid litigation. And here request your honour to not initiate penalty proceedings u/s 271(1)(C)."

We concur with the submissions of Ld SDR with regard to admission made by the Assessee which is conclusively recorded by Ld AO in para 4.7 of the "Impugned Assessment order" which is as under:-

"On perusal of the submission of the assessee it is noted that:

(i) the assessee has suo moto admitted its mistake and offered long term capital gain for the purpose of section 48 as per guidelines for the purpose of payment of stamp duty to stamp valuation authorities u/s 50C.

(ii) The assessee has withdrawn exemption claimed u/s 54F of the Income Tax Act."

We gainfully refer to the judgement of Hon'ble Kerala High Court reported in [1981] 5 Taxman 259 (kerala) Jayashree Chit Funds & Services (P.) Ltd. v. Commissioner of Income Tax wherein it was held that once a leeway is given by the Assessee's CA in the course of Assessment Proceedings basis letter of Authority the same is binding. It was held in para 5 that-

"It was fully within the competence of the chartered accountant to make such a representation before the ITO on behalf of the assessee in the course of the assessment proceedings. We have, therefore, no hesitation to uphold as correct the conclusion recorded by the

Tribunal on this question. Accordingly, both the questions referred are answered in the affirmative, i.e., against the assessee and in favour of the department."

We gainfully refer to the judgement of Hon'ble Uttarakhand High Court reported in [2015] 53 taxmann.com 161(Uttarakhand) Deep Kukreti v. Commissioner of Income Tax wherein on Para 16 following is recorded:-

"16. We are of the view, therefore, that, generally, when an assessment is made on the basis of the consent of the parties, in view of the provision creating the right of appeal, namely, Section 246A in this case, unless there is any grievance for the party as such that the concession was wrongly recorded or that he was coerced into making such concession, which case also the appellants do not have in these cases; the order of the appellate authority, as affirmed by the Tribunal, that the appellants cannot be treated as aggrieved persons is not liable to be interfered with. In such

circumstances, we are of the view that the appellants have not made out a case for interference with the order of the Commissioner of Income Tax, as affirmed by the Tribunal."

We also additionally refer to the judgment of Hon'ble Kerala High Court reported in [2012] 20taxmann.com 679(Kerala) Commissioner of Income Tax v. Vamadevan Bhanu wherein the following is held:-

"Even though counsel appearing for the respondent raised a contention that the appeals are not maintainable for want of tax effect above Rs. 4 lakhs in terms of the Board's circular, we notice that the circular provides for exception for maintainability of appeal in cases involving substantial question of law of importance as well as cases where the same question of law will repeatedly arise. In this case, we notice that assessment was made on the basis of the assessee's agreement that interest income in the financing business could be adopted 27 per cent.

as against 20 per cent. borne out by the accounts. In fact even for the preceding year viz., for the assessment year 1996-97, the assessee agreed for assessment of interest income in the financing business at 27 per cent. as against 20 per cent. We notice from the letter written by the chartered accountant that he has given the commitment on behalf of the assessee agreeing that assessment of interest income at 27 per cent. for both the assessment years 1997-98 and 1998-99 specifically on condition that no penalty proceedings will be initiated under section 271(1)(c) of the Income-tax Act. Counsel for the respondent pointed out the last portion of the assessment order, which is contradictory to the understanding because penalty proceedings were initiated against the assessee. We feel, if the Assessing Officer commits violation of the conditional offer, then the validity of the penalty proceedings could be questioned before higher

authorities or in court. However, the violation on the side of the officer does not mean that the assessment is not made on an agreed basis. We find from the assessment order, the specific statement by the Assessing Officer that "the assessment is completed taking interest at 27 per cent. and as agreed to by the assessee". In the circumstances, we do not think, even an appeal is maintainable by the assessee by taking the untenable contention that the auditor had no authority to represent the assessee. In our view, after disabling the Assessing Officer to conduct enquiry and to sustain assessment on his own reasoning by agreeing for specific additions, it is not fair on the part of the assessee and the auditor to backtrack and disown the commitments. The Board has also decided that in cases involving substantial question of law of importance as well as in cases where the same question of law will repeatedly arise, either in the

case concerned or in similar cases, appeal should be entertained and considered on the merits without being hindered by the monetary limits. 2. We therefore allow the income-tax appeals by reversing the order of the Tribunal and by restoring the assessment confirmed in first appeal on this issue. It is open to the assessee to challenge the penalty orders, if at all issued contrary to the understanding that the assessee had with the officer."

4.4 In view the premises drawn by us we upheld the "Impugned Order" & dismiss the appeal of the Assessee.

5 **Order**

5.1 The appeal of the Assessee is dismissed.

ITA No:-302/Ind/2024 Penalty u/s 271(1)(c):-

5.2 The above captioned Appeal deals with the penalty Issue u/s 271(1)(c) of the Act wherein the penalty of Rs. 24 Lakhs is

sustained in the **"Impugned Order".** The **"Impugned Penalty Order"** u/s 271(1)(c) is dated 28.02.2017 of Ld. Assessing Officer where by Penalty of Rs. 24 Lakh is imposed on the ground that the Assessee has furnished inaccurate particulars of his Income. In this regard we have seen that a Notice u/s 274 rws 271(1)(c) of the Act was issued to the Assessee which was dated 24.08.2016 werein allegation is made of **concealment of the particulars of Income or furnished inaccurate particulars of Income.**

In this regard Hon'ble M.P. High Court in case of PCIT v/s Kulwant Singh Bhatia in ITA No: -9 of 2018 vide order dated 9th May 2018 [2018] 96 taxmann.com 662(Madhya Pradesh) werein Para 8 it was held as under: -

> ***"8. In the case of CIT V/s. Manjunatha Cotton Ginning Factory (supra), it was observed by the Karnataka High Court in para 59 that the practice of the Department sending a printed form where all the ground mentioned in Section 271 are mentioned would not satisfy the requirement of law when the consequences of the assessee not rebutting the initiated presumption is serious in***

nature and he had to pay penalty from 100% to 300% of the tax liability. As the provisions have to be held to be strictly construed, notices issued under Section 274 should satisfy the grounds, which he has to meet specifically. Otherwise, principle of natural justice is offended if the show cause notice is vague. Even in the matter of search case where penalty is levied under Explanation 5A to Section 271(1)(c), it was held by the Karnataka High Court that the show-cause notice under Section 274 was defective as it does not spell out the ground on which the penalty is sought to be imposed and consequently penalty imposed was cancelled. The decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) was further followed by the Karnataka High Court in the case of CIT V/s. SSA'S Emerald Meadows, (2016) 73 taxman.com 248 (SC) / dated 23.11.2015 (ITA 380/2015), the High Court has dismissed the appeal of the revenue by observing that the

Tribunal has allowed the appeal of the assessee holding that the notice issued by the Assessing Officer under Section 274 read with Section 271(1)(c) of the Act of 1961 was bad-in-law as it did not specify which limb of Section 271(1)(c) of the Act of 1961, the penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars. The Tribunal while allowing the appeal of the assessee, had relied on the decision of the Division Bench of Karnataka High Court decision in the case of CIT V/s. Manjunatha Cotton Ginning Factory (supra). It is further pointed out that the SLP filed by the Deptt. before the Apex Court on 5.8.2016 in the matter of CIT V/s. SSA'S Emerald Meadows (supra) was dismissed. In the case of CIT V/s. Suresh Chandra Mittal, (2000) 251 ITR 9 (SC), the Apex Court has upheld the decision of M.P. High Court wherein, in similar circumstances, it was held that the initial burden

lies on the revenue to establish that the assessee had concealed the income or had furnished inaccurate particulars of such income. In the present case, in show-cause notice the Assessing Officer has not specified specifically charges, there was no such mention.

11. On due consideration of the arguments of the learned counsel for the appellant, so also considering the fact that the ground mentioned in show-cause notice would not satisfy the requirement of law, as notice was not specific, we are of the view that the learned Tribunal has rightly relying on the decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) and CIT V/s. SSA'S Emerald Meadows (supra) rightly allowed the appeal of the assessee and set aside the order of penalty imposed by the authorities. No substantial question of law is arising in these appeals. ITA.No(s). 9/2018, 10/2018, 11/2018,

12/2018, 13/2018 and 14/2018, filed by the appellant have no merit and are hereby dismissed."

Even in the present Notice dated 24.08.2016 both the limbs of Section 271(1)(c) are involved. Consequently respectfully following the Judgment of Jurisdictional High Court we too hold that the aforesaid Notice dt 24.08.2016 was not a **specific one on the charge u/s 271(1)(c)** & we find same to be not in conformity with the above decision. **Consequently we set aside the "Impugned Order" & delete the Penalty. Accordingly Appeal of the Assessee is allowed.**

5.3 In the Result ITA No: - 283/Ind/2024 is dismissed & ITA No:-302/Ind/2024 is allowed & Penalty is deleted.

5.4 Both the Appeals are disposed of accordingly as both were heard together with consent of parties.

Pronounced in open court on 22.10.2026.

Sd/-
(ARVIND SONI)
ACCOUNTANT MEMBER

Sd/-
(PARESH M. JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/Dated : 22/10/2026

Copies to:
(1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

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